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**SURFACE  
TRANSPORTATION BOARD**

**EXPEDITED ACTION REQUESTED**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**ARIZONA ELECTRIC POWER  
COOPERATIVE, INC.**

**Complainant,**

**v.**

**BNSF RAILWAY COMPANY**

**and**

**UNION PACIFIC RAILROAD  
COMPANY**

**Defendants.**

231536

**Docket No. 42113**

**FILED**

DEC 20 2011

**SURFACE  
TRANSPORTATION BOARD**

**COMPLAINANT'S PETITION RESPONDING TO THE ORDER SERVED BY  
THE BOARD IN FINANCE DOCKET NO. 35506 ON DECEMBER 9, 2011**

**ARIZONA ELECTRIC POWER  
COOPERATIVE, INC.**

**By:** William L. Slover  
Robert D. Rosenberg  
Christopher A. Mills  
Daniel M. Jaffe  
Stephanie M. Archuleta  
Slover & Loftus LLP  
1224 Seventeenth Street, NW  
Washington, DC 20036  
(202) 347-7170  
(202) 347-3619 (fax)  
Attorneys & Practitioners

**Of Counsel:**  
Slover & Loftus LLP  
1224 Seventeenth Street, NW  
Washington, DC 20036  
(202) 347-7170

**Dated: December 20, 2011**

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SURFACE TRANSPORTATION BOARD**

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**Docket No. 42113**

**COMPLAINANT'S PETITION RESPONDING TO THE ORDER SERVED BY  
THE BOARD IN FINANCE DOCKET NO. 35506 ON DECEMBER 9, 2011**

Complainant Arizona Electric Power Cooperative, Inc. ("AEPCO"), hereby submits this petition in response to the decision that the Surface Transportation Board ("STB" or "Board") served in STB Docket No. FD 35506, *Western Coal Traffic League -- Petition for Declaratory Order ("Premium Case")* on December 9, 2011 (the "Order"). AEPCO respectfully states as follows.

On November 22, 2011, the STB served a decision in AEPCO's above-captioned rate case proceeding (Docket No. 42113). That order set AEPCO's maximum reasonable rates on its coal movements from origins in New Mexico, Wyoming, and Montana served

by BNSF Railway Company ("BNSF") at the jurisdictional threshold and awarded reparations for movements occurring before the new rates take effect. AEPCO delayed the determination of the rate prescription and the reparations with Defendants BNSF and Union Pacific Railroad Company ("UP") until the Board released the 2010 URCS, which the Board did on December 9, 2011. On the same day, the Board issued its *Order* indicating that AEPCO should make an appropriate filing, such as a petition for reconsideration or reopening, in order to be able to obtain the benefit of lower rates for past shipments made at the newly established rates if the Board decides that BNSF's regulatory costs should not reflect some or all of the acquisition premium, which is the matter at issue in the *Premium Case*.

Accordingly, to the extent necessary, AEPCO hereby petitions for reconsideration or reopening of the November 22, 2011 decision to be able to obtain the benefit of lower rates for past shipments made at the newly established rates if it is determined that BNSF's Phase III URCS costs should not reflect some or all of the acquisition premium.<sup>1</sup> Until such a determination is reached, BNSF/UP should not be allowed to charge more than the jurisdictional threshold calculated based on inclusion of the acquisition premium. Based on discussions between counsel for AEPCO and BNSF/UP, AEPCO understands that BNSF/UP do not intend to charge more than this rate level. If the acquisition

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<sup>1</sup> AEPCO would also be entitled to additional reparations, with interest, for movements that occurred before the newly established rate takes effect, *i.e.*, the movements for which AEPCO and BNSF/UP are currently conferring as to refunds. AEPCO and BNSF/UP's view is that *Arizona Grocery Co. v. Atchison, T. & S.F. Ry. Co.*, 284 U.S. 370 (1932), would not present any obstacle to adjusting the amount of reparations awarded based on the treatment of the acquisition premium.

premium is later disallowed in whole or in part. AEPCO should receive reparations reflecting the reduction in the jurisdictional threshold plus interest for all shipments made at the then-newly established rates through the date that AEPCO's future rates are adjusted to reflect the disallowance.

The *Order* appears to frame the above relief in terms of lifting the prescriptive effect of a rate prescription. AEPCO does not necessarily agree that such a description or action is apt or necessary, especially where the parties have yet to agree on reparations or application of the rate prescription (although AEPCO hopes that the parties will be able to reach such agreement shortly). That said, AEPCO does not oppose that characterization at this time and, to the extent necessary, requests such relief, provided it accomplishes the substantive outcome described above.

AEPCO adds that its counsel has conferred with counsel for BNSF/UP and that the parties have agreed among themselves that: (1) AEPCO will be allowed to obtain the benefit of lower rates, in the form of a refund, with interest, for shipments made under the newly established rates prescribed at the jurisdictional threshold level, if the Board determines that BNSF's URCS costs should not reflect some or all of the acquisition premium; (2) until then, BNSF/UP will not charge more than the jurisdictional threshold calculated based on inclusion of the acquisition premium. AEPCO appreciates the cooperation of BNSF and UP in this regard.

Accordingly, AEPCO respectfully requests that the Board enter an order granting the relief as stated above.

Respectfully submitted.

ARIZONA ELECTRIC POWER  
COOPERATIVE, INC.

Of Counsel:  
Slover & Loftus LLP  
1224 Seventeenth Street, NW  
Washington, DC 20036  
(202) 347-7170

Dated: December 20, 2011

By: William L. Slover  
/s/ Robert D. Rosenberg  
Christopher A. Mills  
Daniel M. Jaffe  
Stephanie M. Archuleta  
Slover & Loftus LLP  
1224 Seventeenth Street, NW  
Washington, DC 20036  
(202) 347-7170  
(202) 347-3619 (fax)

Attorneys & Practitioners

CERTIFICATE OF SERVICE

I hereby certify that on this 29th day of December, 2011, I caused copies of the foregoing filing to be served on counsel for Defendants Union Pacific Railroad Company and BNSF Railway Company by hand as follows:

Samuel M. Sipe, Esq.  
Anthony J. LaRocca, Esq.  
Step toe & Johnson LLP  
1330 Connecticut Avenue, NW  
Washington, DC 20036-1795

Michael L. Rosenthal, Esq.  
Covington & Burling LLP  
1201 Pennsylvania Avenue, NW  
Washington, DC 20004-2401

/s/ Robert D. Rosenberg